

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 1030

Committee Substitute Favorable 5/17/16

Committee Substitute #2 Favorable 5/18/16

Fourth Edition Engrossed 5/19/16

Senate Appropriations/Base Budget Committee Substitute Adopted with unengrossed
amendments 6/1/16

Senate Finance Committee favorable as amended with unengrossed amendments 6/1/16

Senate Pensions & Retirement and Aging Committee Substitute Adopted 6/1/16

Sixth Edition Engrossed 6/3/16

Short Title: 2016 Appropriations Act.

(Public)

Sponsors:

Referred to:

May 5, 2016

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE CURRENT OPERATIONS AND CAPITAL IMPROVEMENTS
APPROPRIATIONS ACT OF 2015 AND TO MAKE OTHER CHANGES IN THE BUDGET
OPERATIONS OF THE STATE.

The General Assembly of North Carolina enacts:

PART I. INTRODUCTION AND TITLE OF ACT

INTRODUCTION

SECTION 1.1. The appropriations made in this act are for maximum amounts
necessary to provide the services and accomplish the purposes described in the budget. Savings
shall be affected where the total amounts appropriated are not required to perform these services
and accomplish these purposes, and, except as allowed by the State Budget Act or this act, the
savings shall revert to the appropriate fund at the end of each fiscal year, except as otherwise
provided by G.S. 143C-1-2(b).

TITLE OF ACT

SECTION 1.2. This act shall be known as the "Current Operations and Capital
Improvements Appropriations Act of 2016."

PART II. CURRENT OPERATIONS AND EXPANSION GENERAL FUND

CURRENT OPERATIONS AND EXPANSION/GENERAL FUND

SECTION 2.1. Appropriations from the General Fund of the State for the
maintenance of the State departments, institutions, and agencies, and for other purposes as
enumerated, are adjusted for the fiscal year ending June 30, 2017, according to the schedule that
follows. Amounts set out in parentheses are reductions from General Fund appropriations for the
2016-2017 fiscal year:



references to a specific asset or project include "energy savings projects" or "repairs and renovations of State-owned buildings.""

SECTION 37.8.(b) This section is effective when it becomes law and applies to financing arrangements entered on or after that date.

PART XXXVIII. FINANCE PROVISIONS

INCREASE ZERO TAX BRACKET

SECTION 38.1.(a) Effective for taxable years beginning on or after January 1, 2016, G.S. 105-153.5(a)(1) reads as rewritten:

"(a) Deduction Amount. – In calculating North Carolina taxable income, a taxpayer may deduct from adjusted gross income either the standard deduction amount provided in subdivision (1) of this subsection or the itemized deduction amount provided in subdivision (2) of this subsection that the taxpayer claimed under the Code. The deduction amounts are as follows:

- (1) Standard deduction amount. – The standard deduction amount is zero for a person who is not eligible for a standard deduction under section 63 of the Code. For all other taxpayers, the standard deduction amount is equal to the amount listed in the table below based on the taxpayer's filing status:

Filing Status	Standard Deduction
Married, filing jointly/surviving spouse	\$15,500 \$16,500
Head of Household	12,400 13,200
Single	7,750 8,250
Married, filing separately	7,750 8,250."

SECTION 38.1.(b) Effective for taxable years beginning on or after January 1, 2017, G.S. 105-153.5(a)(1), as amended by subsection (a) of this section, reads as rewritten:

"(a) Deduction Amount. – In calculating North Carolina taxable income, a taxpayer may deduct from adjusted gross income either the standard deduction amount provided in subdivision (1) of this subsection or the itemized deduction amount provided in subdivision (2) of this subsection that the taxpayer claimed under the Code. The deduction amounts are as follows:

- (1) Standard deduction amount. – The standard deduction amount is zero for a person who is not eligible for a standard deduction under section 63 of the Code. For all other taxpayers, the standard deduction amount is equal to the amount listed in the table below based on the taxpayer's filing status:

Filing Status	Standard Deduction
Married, filing jointly/surviving spouse	\$16,500 \$17,500
Head of Household	13,200 14,000
Single	8,250 8,750
Married, filing separately	8,250 8,750."

SECTION 38.1.(c) Notwithstanding G.S. 105-163.2, the Department of Revenue is not required to adjust the withholding tables applicable for the 2016 taxable year.

SECTION 38.1.(d) Except as otherwise provided, this section is effective when it becomes law.

REDUCE TAXATION OF MILL MACHINERY

SECTION 38.2.(a) G.S. 105-187.51B(a)(5) reads as rewritten:

"(a) Tax. – A privilege tax is imposed on the following:

- ...
- (5) A company located at a ports facility for waterborne commerce that purchases specialized equipment to be used at the facility to unload or process bulk cargo to make it suitable for delivery to and use by manufacturing facilities any of the following:

a. Machinery and equipment used at the facility to unload or to facilitate the unloading or processing of bulk cargo and to make it suitable for delivery to and use by manufacturing facilities.

b. Parts, accessories, or attachments used to maintain, repair, replace, upgrade, improve, or otherwise modify such machinery and equipment."

SECTION 38.2.(b) This section becomes effective July 1, 2013, and applies retroactively to purchases made on or after that date. Notwithstanding G.S. 105-241.6, a taxpayer that paid sales and use tax on items that are taxable under G.S. 105-187.51B, as amended by this section, may apply to the Department of Revenue for a refund of the excess tax paid to the extent the refund is the result of the change in the law enacted by this section.

MARKET-BASED SOURCING

SECTION 38.4.(a) G.S. 105-130.4(l) reads as rewritten:

"§ 105-130.4. Allocation and apportionment of income for corporations.

...
(l) ~~(1) The Sales Factor. – The sales factor is a fraction, the numerator of which is the total sales of the corporation in this State during the income year, and the denominator of which is the total sales of the corporation everywhere during the income year. Notwithstanding any other provision under this Part, the receipts from any casual sale of property shall be excluded from both the numerator and the denominator of the sales factor. Where a corporation is not taxable in another state on its apportionable income but is taxable in another state only because of nonapportionable income, all sales shall be treated as having been made in this State.~~

Receipts are in this State if the taxpayer's market for the receipts is in this State. If the market for a receipt cannot be determined, the state or states of assignment shall be reasonably approximated. In a case in which a taxpayer cannot ascertain the state or states to which receipts of a sale are to be assigned through the use of a method of reasonable approximation, the receipts must be excluded from the denominator of a taxpayer's sales factor. Except as otherwise provided by this section, a taxpayer's market for receipts is in this State as provided below:

(1) In the case of sale, rental, lease, or license of real property, if and to the extent the property is located in this State.

(2) Sales of tangible personal property are in this State if the property is received in this State by the purchaser. In the case of delivery of goods by common carrier or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed shall be considered as the place at which the goods are received by the purchaser. Direct delivery into this State by the taxpayer to a person or firm designated by a purchaser from within or without the State shall constitute delivery to the purchaser in this State. In the case of rental, lease, or license of tangible personal property, if and to the extent the property is located in this State.

(3) Other sales are in this State if: In the case of sale of tangible personal property, if and to the extent the property is received in this State by the purchaser. In the case of delivery of goods by common carrier or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed is considered the place at which the goods are received by the purchaser. Direct delivery into this State by the taxpayer to a person or firm designated by a purchaser from within or without the State constitutes delivery to the purchaser in this State.

a. The receipts are from real or tangible personal property located in this State; or

- b. ~~The receipts are from intangible property and are received from sources within this State; or~~
- e. ~~The receipts are from services and the income producing activities are in this State.~~

(4) In the case of sale of a service, if and to the extent the service is delivered to a location in this State.

(5) In the case of intangible property that is rented, leased, or licensed, if and to the extent the property is used in this State. Intangible property utilized in marketing a good or service to a consumer is "used in this State" if that good or service is purchased by a consumer who is in this State.

(6) In the case of intangible property that is sold, if and to the extent the property is used in this State. A contract right, government license, or similar intangible property that authorized the holder to conduct a business activity in a specific geographic area is "used in this State" if the geographic area includes all or part of this State. Receipts from a sale of intangible property that is contingent on the productivity, use, or disposition of the intangible property shall be treated as receipts from the rental, lease, or licensing of the intangible property as provided under subdivision (4) of this subsection. All other receipts from a sale of intangible property shall be excluded from the numerator and denominator of the sales factor.

(11) Broadcasters. – A broadcaster's market for receipts is in this State as provided in G.S. 105-130.4A. For purposes of this section, the term "broadcaster" has the same meaning as defined in G.S. 105-130.4A.

(12) Banks. – A bank's market for receipts is in this State as provided in G.S. 105-130.4A. For purposes of this section, the term "bank" has the same meaning as defined in G.S. 105-130.4B."

SECTION 38.4.(b) Part 1 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-130.4A. Market-based sourcing for broadcasters.

(a) Definitions. – The definitions in G.S. 105-130.4 and the following definitions apply to this section:

(1) Audience factor. – The factor determined by the ratio provided in this subdivision. The ratio is as follows:

a. Television station. – The ratio that the viewing audience located in this State for a television station bears to the total viewing audience for a television station.

b. Radio station. – The ratio that the listening audience in this State for a radio station bears to the total listening audience for a radio station.

c. Cable or satellite program and channel broadcasts. – The ratio that the subscribers for a cable or satellite system located in this State bears to the total subscribers of a cable or satellite system. If the number of subscribers cannot be accurately determined from the books and records maintained by the taxpayer, the ratio shall be determined on the basis of the applicable year's subscription statistics located in published surveys, provided the source selected is consistently used from year to year for this purpose.

(2) Broadcast. – The transmission of audio or video programming, directly or indirectly, to viewers and listeners by any other method of communication or combination of methods.

(3) Broadcaster. – A person that provides audio or video programming to customers in this State by digital or analog means in exchange for one or more

of the following: advertising receipts, subscriber fees, license, rent, or similar fees. The term includes a television or radio station licensed by the Federal Communications Commission, including network-owned or affiliated stations, a television or radio broadcast network, a cable program network, a distributor of audio or video programming, a cable system operator, and a satellite system operator.

(4) Gross receipts. – The same meaning as the term "sales" in G.S. 105-130.4.

(5) Release or in release. – The placing of film or radio programming into service. A film or radio program is placed into service when it is first broadcast to the primary audience for entertainment, educational, commercial, artistic, or other purpose. Each episode of a television or radio series is placed in service when it is first broadcast. A program is not placed in service merely because it is completed and therefore in a condition or state of readiness and availability for broadcast or merely because it is previewed to prospective sponsors or purchasers.

(6) Rent. – License fees or other payments or consideration provided in exchange for the broadcast or other use of television or radio programming.

(7) Subscriber. – The individual residence or other outlet that is the ultimate recipient of the transmission of the audio or video programming.

(b) Reasonable Approximation. – If the audience factor for a receipt cannot be determined, the state or states of assignment shall be reasonably approximated. If a taxpayer is delivering advertising or licensed content directly or indirectly to a known list of subscribers, the taxpayer shall reasonably approximate the receipts attributable to this State's market using a percentage that reflects the ratio of North Carolina subscribers to the total number of subscribers. If the taxpayer is delivering advertising or licensed content through an intermediary and does not have access to the list of subscribers, the taxpayer shall reasonably approximate the receipts attributable to this State's market using a percentage that reflects the ratio of the North Carolina population to the total population in the specific geographic area where the advertisement or licensed content is materially used. Unless the taxpayer provides substantial evidence to the contrary, the area where the advertisement or licensed content is materially used does not include areas outside the United States. If the taxpayer is able to show with substantial evidence that the advertisement or licensed content is materially used in a city within a foreign country, then the population of that city may be included in the population ratio calculation. If the taxpayer is able to show with substantial evidence that the advertisement or license content is materially used throughout a foreign county, then the population of that foreign country may be included in the population ratio calculation. In a case where the specified rules of reasonable approximation fail to reasonably approximate the percentage of receipts attributable to this State's market, the Department may authorize an alternate approach that reflects an attempt to obtain the most accurate assignment of receipts.

(c) Market for Receipts. – The receipts factor of a broadcaster is a fraction, the numerator of which is the sum of the broadcaster's gross receipts from sources within the State and the denominator of which is the sum of the broadcaster's gross receipts from transactions and activity in the regular course of its trade or business everywhere. Advertising gross receipts and license fees for audio or video programming in release are attributable to this State in accordance with the audience factor in this State. Gross receipts from subscriber fees, rents, sales, or similar charges from audio or video programming in release are attributable to this State based on the amount of subscriber or other fees paid by customers in this State. A sale of audio or video programming on tangible media is sourced to this State as sales of tangible personal property."

SECTION 38.4.(c) Part 1 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-130.4B. Market-based sourcing for banks.

(a) Definitions. – The definitions in G.S. 105-130.4 apply to this section and the following definitions apply to this section:

- (1) Bank. – Defined in G.S. 105-130.7B.
- (2) Billing address. – The location indicated in the books and records of the taxpayer on the first day of the taxable year, or on the date in the taxable year when the customer relationship began, as the address where any notice, statement, or billing relating to the a customer's account is mailed.
- (3) Borrower, card holder, or payor located in this State. – A borrower, credit card holder, or payor whose billing address is in this State.
- (4) Card issuer's reimbursement fee. – The fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit, debit, or similar type of card has charged merchandise or services to the card.
- (5) Credit card. – A card, or other means of providing information, that entitles the holder to charge the cost of purchases, or a cash advance, against a line of credit.
- (6) Debit card. – A card, or other means of providing information, that enables the holder to charge the cost of purchases, or a cash withdrawal, against the holder's bank account or a remaining balance on the card.
- (7) Loan. – Any extension of credit resulting from direct negotiations between the taxpayer and its customer, and/or the purchase, in whole or in part, of such an extension of credit from another. The term includes participations, syndications, and leases treated as loans for federal income tax purposes.
- (8) Loan secured by real property. – A loan or other obligation of which fifty percent (50%) or more of the aggregate value of the collateral used to secure the loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property.
- (9) Merchant discount. – The fee, or negotiated discount, charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit, debit, or similar type of card is accepted in payment for merchandise or services sold to the card holder, net of any cardholder chargeback and unreduced by any interchange transaction or issuer reimbursement fee paid to another for charges or purchased made by its cardholder.
- (10) Participation. – An extension of credit in which an undivided ownership interest is held on a prorated basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.
- (11) Payor. – The person who is legally responsible for making payment to the taxpayer.
- (12) Real property owned. – Real property (i) on which the taxpayer may claim depreciation for federal income tax purposes, or (ii) to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes or could claim depreciation if subject to federal income tax. Real property does not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.
- (13) Syndication. – An extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.
- (14) Tangible personal property owned. – Tangible personal property (i) on which the taxpayer may claim depreciation for federal income tax purposes or (ii) to

1 which the taxpayer holds legal title and on which no other person may claim
2 depreciation for federal income tax purposes could claim depreciation if subject
3 to federal income tax. Tangible personal property does not include coin,
4 currency, or property acquired in lieu of or pursuant to a foreclosure.

5 (15) Transportation property. – Vehicles and vessels capable of moving under their
6 own power as well as any equipment or containers attached to such property.
7 Examples of transportation property include aircraft, trains, water vessels,
8 motor vehicles, rolling stock, barges, and trailers.

9 (b) General Rule. – The receipts factor of a bank is a fraction, the numerator of which is
10 the total receipts of the taxpayer in this State during the income year, and the denominator of
11 which is the total receipts of the taxpayer everywhere during the income year. The method of
12 calculating receipts for purposes of the denominator is the same as the method used in determining
13 receipts for purposes of the numerator. The receipts factor includes only those receipts described
14 herein that are apportionable income for the taxable year. Notwithstanding any other provision
15 under this Part, the receipts from the following are excluded from both the numerator and the
16 denominator of the receipts factor:

17 (1) Receipts from a casual sale of property.

18 (2) Receipts exempt from taxation.

19 (3) The portion of receipts realized from the sale or maturity of securities or other
20 obligations that represents a return of principal.

21 (4) Receipts in the nature of dividends subtracted under G.S. 105-130.5(b)(3a) and
22 (3b) and dividends excluded for federal tax purposes.

23 (5) The portion of receipts from financial swaps and other similar financial
24 derivatives that represent the notional principal amount that generates the cash
25 flow traded in the swap agreement.

26 (c) Receipts From the Sale, Lease, or Rental of Real Property. – The numerator of the
27 receipts factor includes receipts from the sale, lease, or rental of real property owned by the
28 taxpayer if the property is located within this State or receipts from the sublease of real property if
29 the property is located within this State.

30 (d) Receipts From the Sale, Lease, or Rental of Tangible Personal Property. – The method
31 for calculating receipts from the sale, lease, or rental of tangible personal property is as follows:

32 (1) Tangible personal property. – Except as provided in subdivision (2) of this
33 subsection, the numerator of the receipts factor includes receipts from the sale,
34 lease, or rental of tangible personal property owned by the taxpayer if the
35 property is located within this State when it is first placed in service by the
36 lessee.

37 (2) Transportation property. – Receipts from the lease or rental of transportation
38 property owned by the taxpayer are included in the numerator of the receipts
39 factor to the extent that the property is used in this State. The extent an aircraft
40 will be deemed to be used in this State and the amount of receipts that is to be
41 included in the numerator of this State's receipts factor is determined by
42 multiplying all the receipts from the lease or rental of the aircraft by a fraction,
43 the numerator of which is the number of landings of the aircraft in this State
44 and the denominator of which is the total number of landings of the aircraft. If
45 the extent of the use of any transportation property within this State cannot be
46 determined, then the property will be deemed to be used wholly in the state in
47 which the property has its principal base of operations. A motor vehicle will be
48 deemed to be used wholly in the state in which it is registered.

49 (e) Interest, Fees, and Penalties From Loans Secured by Real Property. – The numerator of
50 the receipts factor includes interest, fees, and penalties from loans secured by real property if the
51 property is located within this State. If the property is located both within this State and one or

1 more other states, the receipts described in this subsection are included in the numerator of the
2 receipts factor if more than fifty percent (50%) of the fair market value of the real property is
3 located within this State. If more than fifty percent (50%) of the fair market value of the real
4 property is not located within any one state, then the receipts described in this subsection are
5 included in the numerator of the receipts factor if the borrower is located in this State. The
6 determination of whether the real property securing a loan is located within this State is made as of
7 the time the original agreement was made and any and all subsequent substitutions of collateral are
8 disregarded.

9 (f) Interest, Fees, and Penalties From Loans Not Secured by Real Property. – The
10 numerator of the receipts factor includes interest, fees, and penalties from loans not secured by
11 real property if the borrower is located in this State.

12 (g) Net Gains From the Sale of Loans. – The numerator of the receipts factor includes net
13 gains from the sale of loans. Net gains from the sale of loans include income recorded under the
14 coupon stripping rules of section 1286 of the Code. The amount of net gains from the sale of loans
15 that is included in the numerator is determined as follows:

16 (1) Secured by real property. – The amount of net gains, but not less than zero,
17 from the sale of loans secured by real property is determined by multiplying the
18 net gains by a fraction, the numerator of which is the amount included in the
19 numerator of the receipts factor pursuant to subsection (e) of this section, and
20 the denominator of which is the total amount of interest, fees, and penalties
21 from loans secured by real property.

22 (2) Not secured by real property. – The amount of net gains, but not less than zero,
23 from the sale of loans not secured by real property is determined by multiplying
24 the net gains by a fraction, the numerator of which is the amount included in the
25 numerator of the receipts factor pursuant to subsection (f) of this section, and
26 the denominator of which is the total amount of interest, fees, and penalties
27 from loans not secured by real property.

28 (h) Receipts From Interest, Fees, and Penalties from Card Holders. – The numerator of the
29 receipts factor includes interest, fees, and penalties charged to credit, debit, or similar card holders,
30 including annual fees and overdraft fees, if the card holder is located in this State.

31 (i) Net Gains From the Sale of Credit Card Receivables. – The numerator of the receipts
32 factor includes net gains, but not less than zero, from the sale of credit card receivables multiplied
33 by a fraction, the numerator of which is the amount included in the numerator of the receipts factor
34 pursuant to subsection (h) of this section, and the denominator of which is the taxpayer's total
35 amount of interest, fees, and penalties charged to card holders.

36 (j) Miscellaneous Receipts. – The numerator of the receipts factor includes all of the
37 following:

38 (1) Card issuer's reimbursement fees. – Receipts from card issuer's reimbursement
39 fees if the payor is located in this State.

40 (2) Receipts from merchant's discount. – Receipts from a merchant discount if the
41 payor is located in this State.

42 (3) Receipts from ATM fees. – Receipts from one or more of the following:

43 a. ATM fees that are not forwarded directly to another bank.

44 b. Fees for the use of an ATM owned or rented by the taxpayer, if the
45 ATM is located in this State.

46 (4) Loan servicing fees. – Receipts from loan servicing fees if the payor is located
47 in this State.

48 (5) Receipts from services. – Receipts from services not otherwise apportioned
49 under this section if the payor is located in this State.

50 (6) Receipts from investment assets and activity and trading assets and activity. –
51 Receipts from one or more of the following:

- a. Interest and dividends from investment assets and activities and trading assets and activities if the payor is located in this State.
- b. Net gains and other income, but not less than zero, from investment assets and activities and trading assets and activities multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to sub-subdivision a. of this subdivision, and the denominator of which is the taxpayer's total amount of interest and dividends from investment assets and activities and trading assets and activities.

(k) All Other Receipts. – All other receipts not specifically enumerated in this section are included in the numerator of the receipts factor if the payor is located in this State."

SECTION 38.4.(d) Article 9 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-262.2. Rules to implement market-based sourcing.

(a) Purpose and Scope. – It is the policy of the State to provide necessary guidance on a timely basis to corporate taxpayers subject to allocation and apportionment of income under G.S. 105-130.4. Except as otherwise provided in this section, the expedited procedure for the adoption of rules under G.S. 105-262.1 applies to the adoption of rules needed to administer market-based sourcing of receipts.

(b) Fiscal Note. – The Office of State Budget and Management is not required to prepare a fiscal note for a proposed rule under this section. The Secretary is not subject to the fiscal note requirement under G.S. 105-262(c) or under G.S. 105-262.1(c)."

SECTION 38.4.(e) The Utilities Commission shall adjust the rates for public utilities, excluding water public utilities with less than two hundred thousand dollars (\$200,000) in annual operating revenues, for the tax changes in subsection (a) of this section. Each utility shall calculate the cumulative net effect of the tax changes and file the calculations with proposed rate changes to reflect the net prospective tax changes in utility customer rates within 60 days of the enactment of this section. Any adjustments required to existing tax assets or liabilities reflected in the utility's books and records required by the tax changes shall be deferred and reflected in customer rates in either the utility's next rate case or earlier, if deemed appropriate by the Commission.

SECTION 38.4.(f) Subsections (a) through (c) of this section are effective for taxable years beginning on or after the later of (i) the taxable year that the corporate income tax rate is three percent (3%), as provided in G.S. 105-130.3C, or (ii) January 1, 2018. The remainder of this section is effective when it becomes law.

SALES TAX CHANGES

SECTION 38.5.(a) A retailer is not liable for an undercollection of sales or use tax if the retailer made a good-faith effort to comply with the law and collect the proper amount of tax on the repair, maintenance, and installation services as a result of the change under Section 32.18 of S.L. 2015-241. This applies only to the period beginning March 1, 2016, and ending December 31, 2016.

SECTION 38.5.(b) G.S. 105-237.1(a) is amended by adding a new subdivision to read:

"(a) Authority. – The Secretary may compromise a taxpayer's liability for a tax that is collectible under G.S. 105-241.22 when the Secretary determines that the compromise is in the best interest of the State and makes one or more of the following findings:

- ...
- (7) The taxpayer is a retailer or a person under Article 5 of this Chapter, the assessment is for sales or use tax the retailer failed to collect or the person failed to pay on the sales price of or the gross receipts derived from repair, maintenance, and installation services taxable under G.S. 105-164.4(a)(16) and

the retailer or person made a good-faith effort to comply with the sales and use tax laws. This subdivision applies to assessments issued for the period March 1, 2016, through January 1, 2023."

SECTION 38.5.(c) G.S. 105-164.4H(c) reads as rewritten:

"(c) Erroneous Collection if Separately Stated. – An invoice or other documentation issued to a consumer at the time of the sale by a real property contractor shall not separately state any amount for tax. Any amount for tax separately stated on an invoice or other documentation given to a consumer by a real property contractor is an erroneous collection and must be remitted to the Secretary, and the provisions of G.S. 105-164.11(a)(2) do not apply. Secretary."

SECTION 38.5.(d) G.S. 105-164.3 reads as rewritten:

"§ 105-164.3. Definitions.

The following definitions apply in this Article:

...
(12a) House cleaning and janitorial service. – The interior cleaning of a commercial or residential building or structure by a housekeeping service, maid service, janitorial service, or similar cleaning service. The term does not include a service that cleans or waxes floors, cleans carpet, or washes windows unless those services are performed as part of an interior cleaning service package.

...
(16e) Landscaping service. – A service to maintain or improve lawns, yards, or ornamental plants and trees. Examples of landscaping service include the installation of trees, shrubs, or flowers; tree trimming; lawn mowing; and the application of seed, mulch, pesticide, or fertilizer to a lawn or yard.

...
(23a) Motor vehicle service contract. – A service contract sold by a motor vehicle dealer or by or on behalf of a motor vehicle service agreement company for a motor vehicle or one or more components, systems, or accessories for a motor vehicle. For purposes of this subdivision, the term "motor vehicle dealer" has the same meaning as defined in G.S. 20-286 and the term "motor vehicle service agreement company" has the same meaning as defined in G.S. 66-370.

~~(23a)~~(23b) NAICS. – Defined in G.S. 105-228.90.

...
(33d) Real property. – Any one or more of the following:

- a. Land.
- b. Buildings, structures, or permanent fixtures on land.
- c. All rights and privileges belonging or in any way appertaining to the property.
- d. A manufactured home or a modular home that meets all of the following requirements:
 1. It is a residential structure.
 2. It has the moving hitch, wheels, and axles removed.
 3. It is placed upon a permanent foundation.

(33e) Real property contract. – A contract between a real property contractor and another person to perform construction or reconstruction with respect to a capital improvement to real property.

~~(33d)~~(33f) Real property contractor. – A person that contracts to perform construction, reconstruction, installation, repair, or any other service with respect to a real property contract in accordance with G.S. 105-164.4H and to furnish tangible personal property or digital property to be installed or applied to real property in connection with the contract and the labor to install or apply the tangible personal property that becomes part of real property or

obtains a service to fulfill the contract. The term includes a general contractor, a subcontractor, or a builder for purposes of G.S. 105-164.4H. ~~The term does not include a person engaged in retail trade.~~

(33e)(33g) Related member. – Defined in G.S. 105-130.7A.

(33f)(33h) Remote sale. – A sale of tangible personal property or digital property ordered by mail, by telephone, via the Internet, or by another similar method, to a purchaser who is in this State at the time the order is remitted, from a retailer who receives the order in another state and delivers the property or causes it to be delivered to a person in this State. It is presumed that a resident of this State who remits an order was in this State at the time the order was remitted.

(33g)(33i) Repair, maintenance, and installation services. – The term includes the activities listed in this ~~subdivision~~ subdivision and applies to tangible personal property, motor vehicle, digital property, and real property:

- a. To keep or attempt to keep ~~tangible personal~~ property or a motor vehicle in working order to avoid breakdown and prevent ~~repairs, deterioration or repairs~~. This activity may include cleaning, washing, or polishing property. This service includes self-service car washes but does not include receipts listed as exceptions to the tax imposed under G.S. 105-164.4(a)(4).
- b. To calibrate, restore, refinish, or attempt to ~~calibrate or restore~~ tangible ~~personal~~ calibrate, refinish, or restore property or a motor vehicle to proper working order or good condition. This activity may include replacing or putting together what is torn or broken.
- c. To troubleshoot, identify, or attempt to identify the source of a problem for the purpose of determining what is needed to restore ~~tangible personal~~ property or a motor vehicle to proper working order or good condition.
- d. To ~~install or apply~~ install, apply, connect, adjust, program, or set into tangible personal property or motor vehicle except tangible personal property or digital property installed or applied by a real property contractor pursuant to a real property ~~contract~~ contract taxed in accordance with G.S. 105-164.4H.
- e. To modify, change, or alter property or a motor vehicle.
- f. To remove or pump waste from tangible personal property or a motor vehicle.
- g. To inspect or monitor property or motor vehicle.
- h. Pest control for a commercial or residential building or structure.

...
(34a) Retail trade. ~~— A trade in which the majority of revenue is from retailing tangible personal property, digital property, or services to consumers. The term includes activities of a person properly classified in NAICS sector 44-45, buying goods for resale, and rendering services incidental to the sale of merchandise. The term typically includes maintaining an inventory and may include the provision of repair, maintenance, and installation services. Not all activities provided in this subdivision are required for a trade to be considered retail trade.~~

(35) Retailer. – Any of the following persons:

- a. A person engaged in business of making sales at retail, offering to make sales at retail, or soliciting sales at retail of tangible personal property, digital property, or services for storage, use, or consumption in this State. When the Secretary finds it necessary for the efficient

administration of this Article to regard any sales representatives, solicitors, representatives, consignees, peddlers, or truckers as agents of the dealers, distributors, consignors, supervisors, employers, or persons under whom they operate or from whom they obtain the items sold by them regardless of whether they are making sales on their own behalf or on behalf of these dealers, distributors, consignors, supervisors, employers, or persons, the Secretary may so regard them and may regard the dealers, distributors, consignors, supervisors, employers, or persons as "retailers" for the purpose of this Article.

b. ~~A person—person, other than a real property contractor, engaged in business of delivering, erecting, installing, or applying tangible personal property for use in this State that does not become part of real property pursuant to the tax imposed under G.S. 105-164.4(a)(13). property unless the person is one or more of the following:~~

1. ~~A person that solely operates as a real property contractor.~~
2. ~~A person whose only business activity is providing repair, maintenance, and installation services where the person's activities do not otherwise meet the definition of a retail trade.State.~~

c. A person engaged in business of making a remote sale, if one of the conditions listed in G.S. 105-164.8(b) is met.

d. A person, other than a facilitator, required to collect the State tax levied under G.S. 105-164.4(a)-this Article or the local taxes levied under Subchapter VIII of this Chapter and under Chapter 1096 of the 1967 Session Laws.

...
(36) Sale or selling. – The transfer for consideration of title, license to use or consume, or possession of tangible personal property or digital property or the performance for consideration of a service. The transfer or performance may be conditional or in any manner or by any means. The term includes the following:

- a. Fabrication of tangible personal property for consumers by persons engaged in business who furnish either directly or indirectly the materials used in the fabrication work.
- b. Furnishing or preparing tangible personal property consumed on the premises of the person furnishing or preparing the property or consumed at the place at which the property is furnished or prepared.
- c. A transaction in which the possession of the property is transferred but the seller retains title or security for the payment of the consideration.
- d. A lease or rental.
- e. Transfer of a digital code.
- f. An accommodation.
- g. A service contract.
- h. Any other item subject to tax under this Article, except for a real property contract.

...
(38b) Service contract. – A contract where the obligor under the contract agrees to ~~maintain—maintain, monitor, inspect, clean, restore, or repair tangible personal property, property for a period of time or some other defined measure,~~ regardless of whether the property becomes a part of or is affixed to real ~~property, or a motor vehicle. property.~~ The term does not include a single ~~repair, maintenance, or installation service. The term includes a pool~~

1 maintenance contract and a home warranty. Examples of a service contract
2 include a warranty agreement other than a manufacturer's warranty or dealer's
3 warranty provided at no charge to the purchaser, an extended warranty
4 agreement, a maintenance agreement, a repair contract, or a similar agreement
5 or contract.

6"

7 **SECTION 38.5.(e)** G.S. 105-164.4(a) reads as rewritten:

8 **"§ 105-164.4. Tax imposed on retailers.**

9 (a) A privilege tax is imposed on a retailer engaged in business in the State at the
10 percentage rates of the retailer's net taxable sales or gross receipts, listed in this subsection. The
11 general rate of tax is four and three-quarters percent (4.75%). The percentage rates are as follows:

12 ...
13 (13) The general rate of tax applies to the sales price of tangible personal property an
14 item subject to tax under this Article sold to a real property contractor for use
15 by the real property contractor in erecting structures, building on, or otherwise
16 improving, altering, or repairing real property to fulfill a real property contract.
17 These sales are taxed in accordance with G.S. 105-164.4H.

18 ...
19 (16) The general rate applies to the sales price of or the gross receipts derived from
20 repair, maintenance, and installation ~~services~~ services and includes any tangible
21 property or digital property that becomes a part of or is applied to a purchaser's
22 property."

23 **SECTION 38.5.(f)** G.S. 105-164.4D reads as rewritten:

24 **"§ 105-164.4D. Bundled transactions.**

25 (a) Tax Application. – Tax applies to the sales price of a bundled transaction unless one of
26 the following applies:

27 ...
28 (6) Repair, maintenance, and installation to real property. – The bundle is a real
29 property contract that includes both a capital improvement taxable in
30 accordance with G.S. 105-164.4H and a repair, maintenance, and installation
31 service taxable under G.S. 105-164.4(a)(16). If the price of the taxable service
32 in the bundle does not exceed ten percent (10%) of the contract price, then the
33 bundle is not subject to tax. If the price of the taxable service in the bundle is
34 equal to or greater than ten percent (10%) of the contract price, then the tax
35 applies to the taxable repair, maintenance, and installation services portion of
36 the contract. The person must determine an allocated price for each taxable item
37 in the bundle based on a reasonable allocation of revenue that is supported by
38 the person's business records kept in the ordinary course of business.

39 (7) Service contract. – The bundle includes two or more services, one of which is
40 subject to tax under this Article and one of which is not subject to tax under this
41 Article. The person must determine an allocated price for each taxable item in
42 the bundle based on a reasonable allocation of revenue that is supported by the
43 person's business records kept in the ordinary course of business.

44 (b) **Determining Threshold.** – A retailer of a bundled transaction subject to this section
45 may use either the retailer's ~~cost-purchase~~ price or the retailer's sales price to determine if the
46 transaction meets the fifty percent (50%) test or the ten percent (10%) test set out in subdivisions
47 (a)(1) and (a)(3) of this section. A retailer may not use a combination of ~~cost-purchase~~ price and
48 sales price to make this determination. If a bundled transaction subject to subdivision (a)(3) of this
49 section includes a service contract, the retailer must use the full term of the contract in determining
50 whether the transaction meets the threshold set in the subdivision."

1 **SECTION 38.5.(g)** G.S. 105-164.4H, as amended by S.L. 2016-5 and by subsection
2 (c) of this section, reads as rewritten:

3 **"§ 105-164.4H. Real property contractors.**

4 (a) Applicability. – A real property contractor is the consumer of the tangible personal
5 property—property, digital property, or taxable service that the real property contractor installs
6 purchases, installs, or applies for others and that becomes part of real property, for use in a real
7 property contract. A retailer engaged in business in the State shall collect tax on the sales price of
8 the tangible personal property or digital property sold at retail to a real property contractor unless a
9 statutory exemption in G.S. 105-164.13 or G.S. 105-164.13E applies. Where a real property
10 contractor purchases tangible personal property or digital property for storage, use, or
11 consumption in this State—State, or a taxable service sourced to this State, and the tax due is not
12 paid at the time of purchase, the provisions of G.S. 105-164.6 apply except as provided in
13 subsection (b) of this section.

14 (a1) Capital Improvement. – A capital improvement is new construction or a renovation of
15 a building, structure, or fixture on land. Factors that may be considered in determining whether a
16 contract is a real property contract for a capital improvement include the method of attachment for
17 the property installed, the degree of customization of the property installed, and the value added
18 by or useful life of the property installed. Examples of a capital improvement include all of the
19 following:

- 20 (1) Site preparation for and construction of an entirely new structure on real
21 property or of an increase in the square footage of an existing structure
22 regardless of whether or not the site has been previously occupied.
- 23 (2) Removal of items from real property, such as debris, construction materials,
24 asbestos, or excavation activities.
- 25 (3) The performance of work that requires the issuance of a permit under the State
26 Building Code.
- 27 (4) Installation of equipment or fixtures that is attached to real property so that
28 removal of the item would cause physical, functional, or economic damage to
29 the property and that is capitalized for income tax purposes under the Code.
- 30 (5) Installation of a complete system, such as roofing, septic tank, heating,
31 ventilation, and air conditioning, plumbing, electrical, irrigation, sprinkler, and
32 other similar systems.
- 33 (6) Installation of roads, parking lots, and sidewalks.
- 34 (7) Landscaping services.

35 (b) Retailer-Contractor. – This section applies to a retailer-contractor ~~when the~~ as follows:

- 36 (1) Acting as a real property contractor. – A retailer-contractor acts as a real
37 property contractor—contractor when it contracts to perform construction or
38 reconstruction with respect to a capital improvement to real property. A
39 retailer-contractor that purchases tangible personal property to be installed or
40 applied to real property may purchase items exempt from tax under a certificate
41 of exemption pursuant to G.S. 105-164.28 provided the retailer-contractor also
42 purchases inventory items from the seller for resale. When the tangible personal
43 property is withdrawn from inventory and installed or applied to real property,
44 use tax must be accrued and paid on the retailer-contractor's purchase price of
45 the tangible personal property. Tangible personal property that the
46 retailer-contractor withdraws from inventory for use that does not become part
47 of real property is also subject to the tax imposed by this Article. For purposes
48 of this section, the term "purchase price" does not include wages paid by the
49 retailer-contractor to an employee.

(2) Acting as a retailer. – A retailer-contractor is acting as a retailer when it sells items at retail and when it performs repair, maintenance, and installation services subject to tax under G.S. 105-164.4(a)(16).

(b1) Joint and Several Liability. – If a retailer-contractor subcontracts any part of the real property contract, tax is payable by the subcontractor on the subcontractor's purchase of the tangible personal property that is installed or applied to real property in fulfilling the contract. The retailer-contractor, the subcontractor, ~~and the owner of the real property~~, and the lessee of the real property, are jointly and severally liable for the tax. The liability of a retailer-contractor, a subcontractor, ~~or an owner~~ owner, or lessee who did not purchase the property is satisfied by receipt of an affidavit from the purchaser certifying that the tax has been paid.

(c) Erroneous Collection if Separately Stated. – An invoice or other documentation issued to a consumer at the time of the sale by a real property contractor shall not separately state any amount for tax. Any amount for tax separately stated on an invoice or other documentation given to a consumer by a real property contractor is an erroneous collection and must be remitted to the Secretary.

SECTION 38.5.(h) G.S. 105-164.4I(b) and (c) reads as rewritten:

"§ 105-164.4I. Service contracts.

...

(b) Exemptions. – The tax imposed by this section does not apply to the sales price of or the gross receipts derived from a service contract applicable to any of the following items:

(1) An item exempt from tax under this Article. ~~This exemption does not apply to water maintained under a pool maintenance contract or a similar maintenance contract.~~

...

(6) A motor vehicle service contract.

(c) Exceptions. – The tax imposed by this section does not apply to a ~~security or similar security alarm~~ monitoring contract for real property."

SECTION 38.5.(i) G.S. 105-164.13 reads as rewritten:

"§ 105-164.13. Retail sales and use tax.

The sale at retail and the use, storage, or consumption in this State of the following tangible personal property, digital property, and services are specifically exempted from the tax imposed by this Article:

...

(61b) ~~Repair, maintenance, and installation services~~ Tangible personal property, digital property, and services purchased for ~~resale~~ resale under an exemption certificate in accordance with G.S. 105-164.28 or under a direct pay certificate in accordance with G.S. 105-164.27A.

(62) An item or repair, maintenance, and installation services used to maintain or repair tangible personal property pursuant to a service contract taxable under this Article if the purchaser of the contract is not charged for the item or services. ~~This exemption does not apply to an item or repair, maintenance, and installation services provided for a motor vehicle pursuant to a service contract exempt from tax under this Article unless the purchaser of the contract is not charged for the item or services.~~ For purposes of this exemption, the term "item" does not include a tool, equipment, supply, or similar tangible personal property used to complete the maintenance or repair and that is not deemed to be a component or repair part of the tangible personal property for which a service contract is sold to a purchaser.

...

(66) Sales of or the gross receipts derived from the following repair, maintenance, and installation services:

- a. A fee, charge, or other payment for an inspection required by law, regardless of whether the amount is paid to a public or private entity, provided the charge is separately stated on the invoice or other documentation provided to the purchaser at the time of the sale.
- b. Services performed for a person by a related member.
- c. Services performed to resolve an issue that was part of a capital improvement if the services are performed within six months of completion of the capital improvement or, for new construction, within six months of the new structure being occupied for the first time.
- d. Services on roads, parking lots, and sidewalks.
- e. Removal of waste, trash, grease, and other similar items from real property.
- f. Home inspections.
- g. House cleaning and janitorial services.
- h. Landscaping services.

(67) Towing services, provided the charge is separately stated on the invoice or other documentation provided to the purchaser at the time of the sale."

SECTION 38.5.(j) G.S. 105-187.5(a) reads as rewritten:

"(a) Election. – A retailer may elect not to pay the tax imposed by this Article at the rate set in G.S. 105-187.3 when applying for a certificate of title for a motor vehicle purchased by the retailer for lease or rental. A retailer who makes this election shall pay a tax on the gross receipts of the lease or rental of the vehicle. The portion of a lease or rental billing or payment that represents any amount applicable to the sales price of a service contract as defined in G.S. 105-164.3 should not be included in the gross receipts subject to the tax imposed by this Article. The charge ~~should~~ must be separately stated on documentation given to the purchaser at the time the lease or rental agreement goes into effect, or on the monthly billing statement or other documentation given to the purchaser. ~~Where a retailer fails to separately state any portion of a lease or rental billing or payment that represents an amount applicable to the sale price of a service contract, the amount is deemed to be part of the gross receipts of a lease or rental of a vehicle.~~ When a lease or rental contract is sold to another retailer, the seller of the lease or rental contract should provide to the purchaser of the lease or rental contract the documentation showing that the service contract and applicable sales taxes were separately stated at the time the lease or rental went into effect. Like the tax imposed by G.S. 105-187.3, this alternate tax is a tax on the privilege of using the highways of this State. The tax is imposed on a retailer, but is to be added to the lease or rental price of a motor vehicle and thereby be paid by the person who leases or rents the vehicle."

SECTION 38.5.(k) The Department of Revenue must issue written guidance on the implementation of the sales tax changes imposed by this section within 120 days of the enactment of this subsection.

SECTION 38.5.(l) G.S. 105-164.27A is amended by adding a new subsection to read:

"(a3) Boat and Aircraft. – A direct pay permit for repair, maintenance, and installation services authorizes its holder to purchase repair, maintenance, and installation services for a boat, an aircraft, or a qualified jet engine without paying tax to the seller and authorizes the seller to not collect any tax on the services from the permit holder. A person who purchases these services under a direct pay permit must file a return and pay the tax due to the Secretary by the end of the month following the month in which the services are purchased. A permit holder is allowed a use tax exemption equal to the amount of the sales price of or the gross receipts derived from repair, maintenance, and installation services for a boat, an aircraft, or a qualified jet engine that exceeds twenty-five thousand dollars (\$25,000)."

SECTION 38.5.(m) G.S. 105-467(b) reads as rewritten:

"(b) Exemptions and Refunds. – The State exemptions and exclusions contained in G.S. 105-164.13 and G.S. 105-164.27A apply to the local sales and use tax authorized to be levied and imposed under this Article. The State refund provisions contained in G.S. 105-164.14 through G.S. 105-164.14B apply to the local sales and use tax authorized to be levied and imposed under this Article. A refund of an excessive or erroneous State sales tax collection allowed under G.S. 105-164.11 and a refund of State sales tax paid on a rescinded sale or cancelled service contract under G.S. 105-164.11A apply to the local sales and use tax authorized to be levied and imposed under this Article. The aggregate annual local refund amount allowed an entity under G.S. 105-164.14(b) for a fiscal year may not exceed thirteen million three hundred thousand dollars (\$13,300,000).

Except as provided in this subsection, a taxing county may not allow an exemption, exclusion, or refund that is not allowed under the State sales and use tax. A local school administrative unit and a joint agency created by interlocal agreement among local school administrative units pursuant to G.S. 160A-462 to jointly purchase food service-related materials, supplies, and equipment on their behalf is allowed an annual refund of sales and use taxes paid by it under this Article on direct purchases of tangible personal property and services. Sales and use tax liability indirectly incurred by the entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the entity and is being erected, altered, or repaired for use by the entity is considered a sales or use tax liability incurred on direct purchases by the entity for the purpose of this subsection. The refund allowed under this subsection does not apply to purchases of electricity, telecommunications service, ancillary service, piped natural gas, video programming, or a prepaid meal plan. A request for a refund is due in the same time and manner as provided in G.S. 105-164.14(c). Refunds applied for more than three years after the due date are barred."

SECTION 38.5.(n) G.S. 105-524(e) is repealed.

SECTION 38.5.(o) Subsections (d) through (j) of this section become effective January 1, 2017, and apply to sales made on or after that date. Subsections (l) and (m) of this section become effective July 1, 2016, and apply to purchases of repair, maintenance, and installation services purchases on or after that date. Subsection (n) of this section is effective for fiscal years beginning on or after July 1, 2016. The remainder of this section is effective when it becomes law and subsection (c) of this section applies retroactively to January 1, 2015.

PROPERTY TAX EXCLUSION EXTENSION

SECTION 38.6.(a) Section 2 of S.L. 2011-123 reads as rewritten:

"**SECTION 2.** This act is effective for taxes imposed for taxable years beginning on or after July 1, 2011, and expires for taxes imposed for taxable years beginning on or after July 1, ~~2016-2021.~~"

SECTION 38.6.(b) This section is effective when it becomes law.

PART XXXIX. MISCELLANEOUS PROVISIONS

STATE BUDGET ACT APPLIES

SECTION 39.1. The provisions of the State Budget Act, Chapter 143C of the General Statutes, are reenacted and shall remain in full force and effect and are incorporated in this act by reference.

COMMITTEE REPORT

SECTION 39.2.(a) The Senate Appropriations Committee Report on the Base, Expansion and Capital Budgets for House Bill 1030, dated June 1, 2016, which was distributed in the Senate and used to explain this act, shall indicate action by the General Assembly on this act and shall, therefore, be used to construe this act, as provided in the State Budget Act, Chapter